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EXECUTIVE SUMMARY

STATE PUBLIC DEFENDER'S EFFICIENCY REPORT Required by Senate File 439 (Act of 80th General Assembly, First Session, 2003) December 15, 2003

I. Background

In Senate File 439, the 80th Iowa General Assembly required the State Public Defender to conduct an efficiency study and report on the following topics: guidelines for appointment of attorneys (including the federal standard) and recommendations for changes in Iowa's definition of "indigent;" recommendations on methods for recouping delinquent indigent defense fees and other court-ordered payments; detailing the State Public Defender's cost-containment efforts; and the State Public Defender's performance measures. SF 439 required the State Public Defender to consult with the indigent defense advisory commission, the judicial branch, the Iowa state bar association, and other interested parties.

II. Indigence Standards

Iowa's financial standards for appointment of counsel are set by statute. They incorporate by reference current poverty income guidelines published by the U.S. Department of Health and Human Services (HHS). Thus, eligibility standards are automatically updated without amending the statute. Iowa's standards also allow judges flexibility to consider the nature of the case and a defendant's ability to pay aside from income in deciding whether to appoint counsel.

Iowa's judges and public defenders are generally satisfied with Iowa's eligibility standards. However, there is anecdotal evidence of occasional inconsistent application.

There are national standards on eligibility for appointed counsel published by the American Bar Association and other organizations, but none of these set out a particular formula. Some states have been hampered by an inflexible statutory standard that, if not updated, results in denial of appointed counsel to many who are truly impoverished. Others, including the federal government, use a completely ad hoc standard that produces inconsistency and permits appointment of counsel to some who would be considered wealthy.

Recommendation: The State Public Defender recommends Iowa's indigence standards not be changed. Iowa's standards meet national standards. They incorporate HHS poverty guidelines, which provide an objective anchor but allow for automatic updating. Iowa's standards are flexible and allow judges to consider the severity of the case and the defendant's ability to pay beyond his or her income. Occasional incidents of improper application are not a basis for change.

III. Recoupment of Indigent Defense Costs

The State recovers indigent defense costs from defendants at the rate of about ten cents for each dollar spent as part of its posttrial restitution program. The reasons for this low recovery rate are defendants' indigence, prison sentences, substitution of community service, and a low statutory priority for recovery of indigent defense costs. The restitution program also generates its own indigent defense costs and doesn't contribute to Iowa's indigent defense programs.

As an alternative to a posttrial restitution program, some states require a prepaid fee as a prerequisite to receiving appointed counsel. Although fee programs do not violate national standards, they are fraught with problems. Of particular concern are inflated assumptions of fee income, costs of administration, and the constitutionality of the requirement. Iowa once considered a fee program but rejected it.

Recommendation: If Iowa continues attempting to recoup indigent defense costs, no changes are recommended to the current system. No system generates sufficient revenue to offset the cost of administration. If recoupment is considered desirable for symbolic reasons, the present system is as good as any. The State should consider whether a dime-on-the-dollar is a satisfactory return rate for the investment of resources devoted to recoupment.

IV. Cost Containment Efforts

The State Public Defender has implemented cost-containment procedures for both Public Defender Operations and administration of the Indigent Defense Fund. The specifics are set out in detail in the report. One budget-mandated action – holding public defender positions vacant – actually increases overall indigent costs by requiring more cases to be handled by assigned counsel appointed from the private bar.

The State Public Defender emphasizes the overall needs of Iowa's indigent defense programs are determined by the Legislature, law enforcement, and prosecutors, and not by anyone involved with indigent defense. Every policy decision affecting criminal justice also has an impact on indigent defense costs. Indigent defense costs are constitutionally mandated and should be considered part and parcel of criminal justice costs. If Iowa maintains robust programs for prosecution of crime, it must also maintain robust indigent defense programs.

Recommendation: The State Public Defender recommends focusing on the *long-term efficiency* of indigent defense programs, and the *management* and *containment* of indigent defense costs. The best way to manage the long-term costs of indigent defense is to fund public defender operations fully, expand public defender coverage where appropriate, and provide increased

incentive for experienced and efficient assigned counsel to take court appointments for those cases not handled by public defenders. Concerning the latter, see the Indigent Defense Advisory Commission's report, dated December 9, 2002, recommending serious consideration for an increase in assigned counsel fees, and the Commission's 2003 report (attached to this report) that reiterates that recommendation. While these actions will produce short-term costs, the investment will be recovered in the long run.

V. State Public Defender Performance Measures

The State Public Defender is meeting or exceeding all of its performance measures except one, which will be met by the end of the current fiscal year.